dictions have held the evidence admissible.[16] A recent Minnesota case admits the evidence although the witness was not an expert.[17] *Cochran* v. *Stein*, 136 N. W. 1037 (Minn.). This decision, it is submitted, takes the correct view. The witness is unable adequately to tell the jury how the lost signature looked, without expressing his opinion whether it resembles the signatures in court; and the circumstances of the case make the evidence peculiarly essential. It is not necessary to rely on the additional reason present in similar cases where the witness is an expert.

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REGULATION OF RAILROAD CROSSINGS. — By virtue of the police power a state legislature enjoys a wide discretion as to the regulation of railroad crossings, which it may delegate to a commission[1] or municipal corporation.[2] This discretion will not be questioned unless abused.[3] Thus, a railroad required to maintain a crossing [4] or construct a viaduct over its tracks [5] at its own expense cannot complain that its property is taken without due process of law. Where several railroads using the same tracks have agreed with each other or with the municipality as to how the expense of such improvements shall be distributed, a different apportionment does not impair the obligation of contracts [6] or deny the equal protection of the laws.[7]

If an alteration is to be made the legislature or its delegates may dictate the plans and specifications.[8] In a recent case an ordinance requiring a railroad to build a viaduct over its tracks of sufficient additional strength to support a street railway was held valid. *Missouri Pacific Ry. Co.* v. *City of Omaha*, 197 Fed. 516 (C. C. A., Eighth Circ.). The decision seems to stand for this principle: a railroad's property is not taken for private purposes, because another company which is to benefit by the improvement is not obliged to contribute, so long as the use which this incidental beneficiary makes of the highway improvement does not exceed what the particular state can authorize as a proper exer-

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[16] Koons *v.* State, 36 Oh. St. 195; State *v.* Shinborn, 46 N. H. 497; *contra*, Hynes *v.* McDermott, 82 N. Y. 41.

[17] *Cf.* Hammond *v.* Wolf, 78 Ia. 232, 42 N. W. 778. This case was decided under a statute the material words of which were, "Evidence respecting handwriting may be given by comparison made by experts . . . with writings of the same person which are proved to be genuine." The reasoning of the opinion would seem to be equally convincing in the absence of a statute.

[1] New York and New England R. Co. *v.* Bristol, 151 U. S. 556, 14 Sup. Ct. 437.

[2] Chicago, B. & Q. R. Co. *v.* Nebraska, 170 U. S. 57, 18 Sup. Ct. 513; People *v.* Union Pacific R. Co., 20 Colo. 186, 37 Pac. 610.

[3] See New York and New England R. Co. *v.* Bristol, 151 U. S. 556, 570, 571, 14 Sup. Ct. 437, 441.

[4] Boston and Maine R. Co. *v.* York County Commissioners, 79 Me. 386, 10 Atl. 113; Chicago N. W. R. Co. *v.* Chicago, 140 Ill. 309, 29 N. E. 1109.

[5] Chicago, B. & Q. R. Co. *v.* Nebraska, *supra*; New York and New England R. Co. *v.* Bristol, *supra*.

[6] Chicago, B. & Q. R. Co. *v.* Nebraska, *supra*; Grand Trunk Western Ry. Co. *v.* Railroad Commission of Indiana, 221 U. S. 400, 31 Sup. Ct. 537.

[7] Chicago, B. & Q. R. Co. *v.* Nebraska, *supra*; Grand Trunk Western Ry. Co. *v.* Railroad Commission of Indiana, *supra*.

[8] Chicago, B. & Q. R. Co. *v.* Nebraska, *supra*; New York and New England R. Co. *v.* Bristol, *supra*; People *v.* Union Pacific R. Co., *supra*.

cise of the highway easement. The result is sound, for, since the railroad and not the highway use creates the danger, it is not unreasonable that the former rather than the latter should bear the expense of removing it.[9]

It is well settled in most states [10] that a street railway is a proper use of the highway within the scope of the original taking or dedication. The abutting owners cannot recover damages for such use as excessive, nor an intersecting railroad for interference with its right of way.[11] Whether the motive power be horse,[12] cable,[13] or electricity,[14] is immaterial so long as the purpose is to facilitate traffic along the street. Even a subway is not an excessive use though it deprive the abutting owner of vaults below the street.[15] Since the street railway enjoys special privileges, the state or city may demand in return that it build or repair the highways or viaducts it uses.[16] But if the state does not choose to do so the railroad would seem to have no sounder complaint because it is obliged to make a viaduct capable of accommodating a street railway than because it must make one strong enough to carry taxicabs, omnibuses, gas pipes, sewers,[17] or any other proper street uses. It is unfortunate, therefore, that several previous authorities should have rejected the doctrine of the principal case and held similar legislation unconstitutional.[18]

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[9] See Boston and Maine R. Co. *v.* York County Commissioners, 79 Me. 386, 396, 10 Atl. 113, 115.

[10] New York seems to be the only dissenting state. Craig *v.* Rochester City and Brighton R. Co., 39 N. Y. 404; Paige *v.* Schenectady Ry. Co., 178 N. Y. 102, 70 N. E. 213. See LEWIS, EMINENT DOMAIN, 3 ed., §§ 158, 161. In Pennsylvania, however, an electric railway is held an improper use of country roads, though proper in city streets. Pennsylvania R. Co. *v.* Montgomery County Passenger Ry., 167 Pa. St. 62, 31 Atl. 468. And in Wisconsin interurban street railroads are held excessive, though intraurban are within the proper uses of the highway. Younkin *v.* Milwaukee, etc. Co., 120 Wis. 477, 98 N. W. 215.

[11] Chicago, etc. R. Co. *v.* Whiting, etc. R. Co., 139 Ind. 297, 38 N. E. 604; Chicago, B. & Q. R. Co. *v.* West Chicago St. R. Co., 156 Ill. 255, 40 N. E. 1008.

[12] Attorney-General *v.* Metropolitan R. Co., 125 Mass. 515; Hinchman *v.* Patterson Horse R. Co., 17 N. J. Eq. 75.

[13] Rafferty *v.* Central Traction Co., 147 Pa. St. 579, 23 Atl. 884.

[14] Howe *v.* West End St. R. Co., 167 Mass. 46, 44 N. E. 386; Dean *v.* Ann Arbor St. R. Co., 93 Mich. 330, 53 N. W. 396.

[15] Sears *v.* Crocker, 184 Mass. 586, 69 N. E. 327. An elevated railroad, however, is usually held an excessive use. Story *v.* New York Elevated R. Co., 90 N. Y. 122. See LEWIS, EMINENT DOMAIN, 3 ed., § 157. A commercial railroad is held an excessive use, also, since it does not facilitate traffic along the highway, but merely between station and station along its line. Bond *v.* Pennsylvania R. Co., 171 Ill. 508, 49 N. E. 545; Bork *v.* United N. J. R. & C. Co., 70 N. J. L. 268, 57 Atl. 412. See LEWIS, EMINENT DOMAIN, 3 ed., §§ 152–156.

[16] *Cf.* Jenree *v.* Metropolitan St. Ry. Co., 86 Kan. 479, 121 Pac. 510; City of Brooklyn *v.* Brooklyn City R. Co., 47 N. Y. 475; Detroit, F. W. & B. I. Ry. *v.* Osborn, 189 U. S. 383, 23 Sup. Ct. 540.

[17] These are recognized street uses. Cone *v.* Hartford, 28 Conn. 363; Cheney *v.* Boston Consolidated Gas Co., 198 Mass. 356, 84 N. E. 492. It would seem that railroads must provide for them. *Cf.* New Orleans Gas Light Co. *v.* Drainage Commission of New Orleans, 197 U. S. 453, 25 Sup. Ct. 471; Chicago, B. & Q. Ry. Co. *v.* Drainage Commissioners, 200 U. S. 561, 26 Sup. Ct. 341.

[18] Briden *v.* New York, N. H. & H. R. Co., 27 R. I. 569, 65 Atl. 315. *Cf.* Carolina Central R. Co. *v.* Wilmington St. Ry. Co., 120 N. C. 520, 26 S. E. 913; Conshocken R. Co. *v.* Pennsylvania R. Co., 15 Pa. Co. Ct. R. 445. It is to be noted that in the last two cases the railroad was not directly ordered by the legislature to assume the entire